SERVICES 2000:

Canadian Services Industries and the GATS 2000 Negotiation

CANADIAN LEGAL SERVICES

A Consultation Paper
in preparation for the World Trade Organization (WTO)
General Agreement on Trade in Services (GATS) Negotiations

Canada

Prepared by the International Investment and Services Directorate
Industry Canada

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EXECUTIVE SUMMARY

Canada will soon be involved in comprehensive multilateral negotiations regarding trade in services. This discussion paper attempts to increase industry awareness of the main issues, challenges, and most importantly, opportunities that are relevant to the legal services industry. It also seeks to gather input regarding the kind of approach Canada should take and the types of goals the legal services industry would like to see achieved during these service negotiations. Comments provided in response to this document will assist the Canadian government in establishing its negotiation objectives.

International trade in services between the over 130 Members of the World Trade Organization (WTO) is regulated by the General Agreement on Trade in Services (GATS). This Agreement was negotiated during the Uruguay Round of multilateral trade negotiations and covers all service sectors and all forms of trade in services. While the GATS is a government-to-government agreement, it is of direct relevance to firms. The GATS establishes a basic set of rules for world trade in services, a clear set of obligations for each Member country, and a legal structure for ensuring that those obligations are observed. This helps identify market openness and attempts to provide equitable market access.

Within the global economy, the significance of trade in services in hard to ignore. International trade in services currently amounts to well over one trillion US dollars, a significant portion of total world trade. The service industries also account for a significant portion of the growth of the domestic economy and of job creation. In light of this increasing tradeability of services and the growing importance of service sectors to the economy, it is important to continue liberalizing trade in services and establish effective rules. Through the GATS negotiations, Canada hopes to secure better access to foreign service markets and higher levels of liberalization in service sectors. Professional services, including legal services, will play an important role in the next round of GATS negotiations.

Lawyers are skilled professionals who provide advisory and representation services in the various fields of law. The legal services sector has experienced a steady and continuous growth in the past decade. In 1997, approximately 67,000 persons were employed as lawyers, notaries or judges in Canada. Canadian lawyers so far have only had moderate success on the international market, but the potential for increased exports of legal services is good.

Lawyers supplying legal services abroad usually act as foreign legal consultants (FLC). Foreign legal consultants may provide advice in international law, the law of their home country or in the law of any third country for which they possess the required qualifications. Foreign lawyers are less likely to be involved in domestic law due to barriers such as qualification requirements, which are shaped along national lines.

This discussion paper attempts to identify the barriers that the Canadian legal sector faces when trying to export its services. However, to truly understand the situation of the Canadian industry, input

from the private sector is necessary. By examining individual experiences in the international market, we hope to develop a better understanding of the real barriers that have limited the export of Canadian legal services.

The input and participation of members of the legal sector are essential to establishing appropriate negotiating objectives and determining Canada's negotiation agenda. Towards this end, we are seeking input from those involved, or interested, in the exportation of Canadian legal services. The following questions are offered as guidelines for formulating comments.

- What type of services do you currently export or what type of international activities have you undertaken?

- What are the destinations of these service exports?

- Currently how important are your international exports and activities:
  - very important;
  - moderately important; or
  - not important at all?

- In order, what are the most important methods by which you reach your foreign clients:
  - establishing a legal entity in the foreign country (i.e. subsidiary or branch);
  - temporarily sending personnel to the client's foreign location;
  - by mail;
  - over the phone;
  - by fax;
  - transmitting your services electronically over the Internet; or
  - having the foreign client visit you in Canada?

- In the future, which countries do you anticipate will be important export destinations for your services?

- What type of services do you anticipate exporting in the future or what kind of international activities do you expect to undertake in the future?

- How important do you anticipate international trade will be in the future:
  - very important;
  - moderately important; or
  - not important at all?

- Do you anticipate that your method of delivering services internationally will change?

- In the future what do you anticipate will be the most important methods by which you reach your foreign clients:
  - establishing a legal entity in the foreign country (i.e. subsidiary or branch);
  - temporarily sending personnel to the client's foreign location;
  - delivering services by mail, over the phone, or by fax;
  - transmitting your services electronically over the Internet; or
  - having the foreign client visit you in Canada?

- If you have limited or curtailed your international activities, was it as a result of:
  - barriers to foreign market access;
  - lack of government procurement opportunities;
  - lack of commercial competitiveness; or
  - other barriers?

- In each of your foreign markets (current or future), how much do local regulations affect your firm's ability to provide services:
  - a lot;
  - moderately; or
  - not at all?

- What specific measures have impeded your firm's business, or have affected your customers' ability to do business with your firm? (If possible, please cite the law or policy that impedes the conduct of business.)

- For each impediment to doing business, how important is it for your firm that the measure be removed:
  - very important;
  - moderately important; or
  - not important at all?

- Do you think that partnering with foreign firms is an effective way to deliver services? Can you establish or form associations easily?

- What would you consider the priority concerns with respect to the liberalization of trade in legal services? (Rank the following from most to least important.)
  - "Buy-local" preferences
  - Investment limits or restrictions
  - Restrictions on the form of commercial establishments (i.e. partnership, joint venture, etc.)
  - Immigration/temporary entry restrictions

- Limitations on the number of service providers in the market (i.e. quotas, exclusive rights, etc.)
- Non-recognition of professional credentials
- Lack of transparency of local practising/licensing regime
- Restrictions on access to government procurement projects
- Subsidies and tax incentives
- Licensing requirements
- Qualification requirements
- Restriction on the use of company names
- Language requirements
- Residency/citizenship requirements
- Restrictions on fee-setting
- Unfair bidding practices
- Currency controls
- Others _____

- Negotiation of a multilateral agreement on services trade may well involve an exchange of concessions in which each country would agree to further liberalization of its domestic market. Are there any Canadian measures affecting your sector that are essential to your continued profitability and that should not be liberalized?

- Are there certain areas where internationally liberalized market access in Canada will have a significant impact on Canadian firms? What will be this impact and how large will it be?

- Do you consider that the barriers to trade in legal services warrant significant attention in the GATS negotiations? Why?

If you wish to make your views known to the government, please forward your input to the following address:

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I. INTRODUCTION

One of the key accomplishments of the last round of multilateral trade negotiations was the negotiation of the General Agreement on Trade in Services (GATS). This Agreement resulted in improved rules for governing international trade in services. While much was accomplished during this first round of negotiations on trade in services, there remains room for improvement, for expanding the coverage of commitments, and for eliminating trade restrictions. A new round of negotiations, scheduled to begin no later than January 2000, will seek to expand existing commitments in trade in services.

Promoting trade liberalization continues to be an objective of the Canadian government. Strengthening and expanding the GATS is key to capitalizing on trade opportunities, increasing exports from our service sectors, and creating jobs and growth for all Canadians. Increased access to international trade and investment opportunities for the service industries results not only in job creation in this sector, but also in the creation of opportunities for all businesses.

The GATS is not just a treaty between governments; it is first and foremost an instrument for the benefit of business in general. Specifically, it increases opportunities for service companies wishing to export services or to invest and operate abroad. The Canadian government believes that further liberalization under the GATS will benefit Canadian industry and individuals alike. Active involvement of the private sector is important to ensure that outcomes reflect Canadian interests. By actively providing input, the legal services industry can help ensure that policy reflects its true export and economic interests.

"Active service industries involvement in the negotiations is crucial to target Canadian negotiating objectives towards the priorities of business."

Over the coming months, Canadian government officials will be consulting closely with service providers, provincial governments, and other interested parties to define Canadian objectives for the next round of GATS negotiations. The messages heard during these consultations will help shape Canada's negotiation strategy, specifically what we want or need from other countries, what we are willing to concede in order to achieve our objectives, and serve the industry's interests.

This document represents the first step in a consultation process aimed at determining the negotiating position of the Canadian *Legal Services* sector. The definition of this sector is based on the *World Trade Organization's Services Sectoral Classification* used by the majority of Member countries (i.e. countries that are signatories to the World Trade Organization and thus the GATS). It includes legal advisory and representation services. For a more detailed definition, please refer to Annex A.

It is our hope that the following analysis will provide valuable information while soliciting the views of industry members. Within this document you will find:

- A brief review of the General Agreement on Trade in Services (GATS);
- An overview of service industries within a global and domestic context;
- An analysis of the legal services sector globally and in Canada;
- A discussion of the changing international and domestic regulatory and trade environments;
- An analysis of current GATS commitments related to legal services; and
- Initial Canadian objectives for GATS 2000.

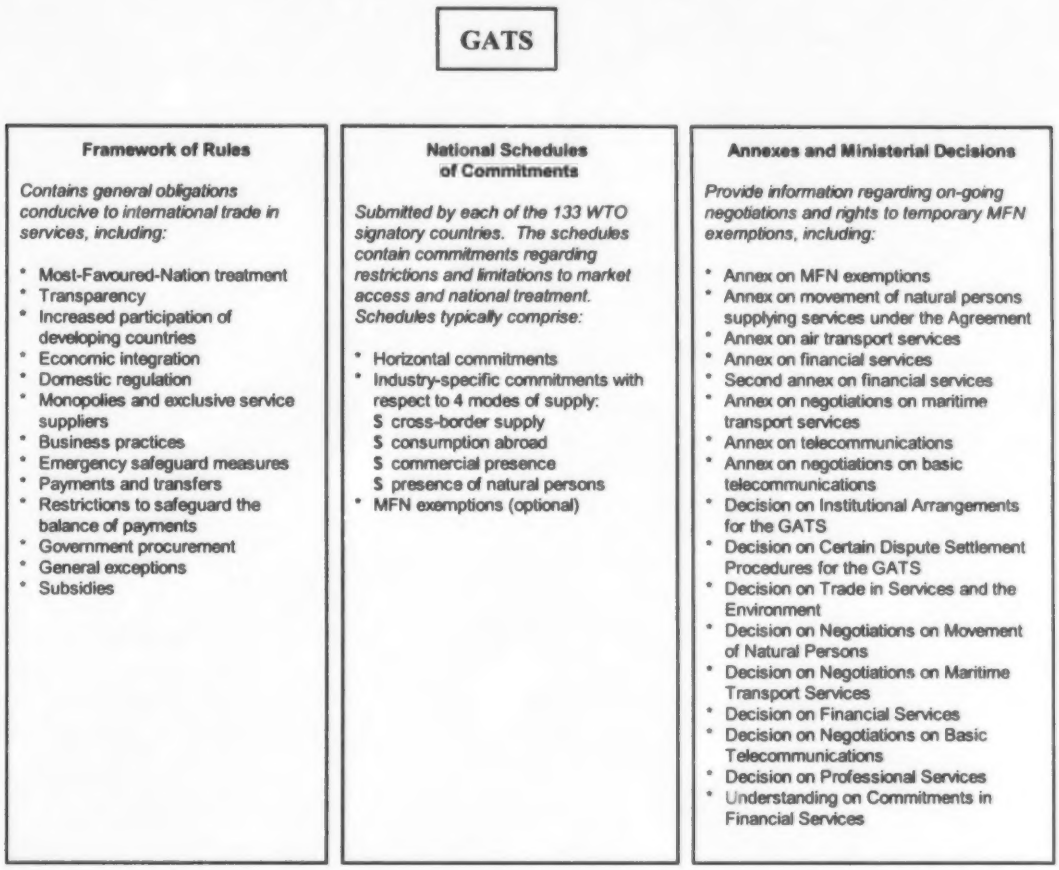
II. REVIEW OF THE GENERAL AGREEMENT ON TRADE IN SERVICES (GATS)

What is the GATS?

The General Agreement on Trade in Services (GATS), negotiated during the Uruguay Round of multilateral negotiations, is a multilateral, comprehensive framework of rules governing trade in services. It applies to all service sectors and all forms of trade in services, including investment. It comprises three parts:

1) the general framework of rules and obligations;
2) individual schedules of commitments for each WTO Member, which specify, on a sector-by-sector basis, the conditions under which foreigners may supply services; and
3) annexes and ministerial decisions.

Figure 1: Components of the General Agreement on Trade in Services (GATS)


GATS
Framework of Rules
Contains general obligations conducive to international trade in services, including:
• Most-Favoured-Nation treatment
• Transparency
• Increased participation of developing countries
• Economic integration
• Domestic regulation
• Monopolies and exclusive service suppliers
• Business practices
• Emergency safeguard measures
• Payments and transfers
• Restrictions to safeguard the balance of payments
• Government procurement
• General exceptions
• Subsidies
National Schedules of Commitments
Submitted by each of the 133 WTO signatory countries. The schedules contain commitments regarding restrictions and limitations to market access and national treatment. Schedules typically comprise:
• Horizontal commitments
• Industry-specific commitments with respect to 4 modes of supply:
$ cross-border supply
$ consumption abroad
$ commercial presence
$ presence of natural persons
• MFN exemptions (optional)
Annexes and Ministerial Decisions
Provide information regarding on-going negotiations and rights to temporary MFN exemptions, including:
• Annex on MFN exemptions
• Annex on movement of natural persons supplying services under the Agreement
• Annex on air transport services
• Annex on financial services
• Second annex on financial services
• Annex on negotiations on maritime transport services
• Annex on telecommunications
• Annex on negotiations on basic telecommunications
• Decision on Institutional Arrangements for the GATS
• Decision on Certain Dispute Settlement Procedures for the GATS
• Decision on Trade in Services and the Environment
• Decision on Negotiations on Movement of Natural Persons
• Decision on Negotiations on Maritime Transport Services
• Decision on Financial Services
• Decision on Negotiations on Basic Telecommunications
• Decision on Professional Services
• Understanding on Commitments in Financial Services

The multilateral trading system, under which the GATS was negotiated, has existed for fifty years. Among the outcomes of the latest round of negotiations was the establishment of the World Trade Organisation (WTO). This organization is responsible for overseeing the implementation of the various multilateral trade agreements and their dispute settlement mechanisms. The next round of GATS negotiations (GATS 2000) will take place under the auspices of the WTO.

While the GATS is a government-to-government agreement, it is of direct relevance to firms because it lays down the framework of international rules within which firms operate around the globe. The GATS establishes a basic set of rules for world trade in services, a clear set of obligations for each Member country, and a legal structure for ensuring that those obligations are observed. This allows firms to identify which markets are open to foreign service providers and to be sure that these markets will remain open in the future. In the event of a disagreement, the Agreement contains a dispute settlement mechanism through which Member countries can attempt to obtain the treatment to which they are entitled.

The Agreement establishes a basic set of rules for world trade in services, a clear set of obligations for each Member country and a legal structure for ensuring that those obligations are observed.

The GATS covers virtually every aspect of services trade, including:

- the majority of services;
- almost all the major world markets;
- the different means by which a service can be supplied to a foreign market customer; and
- the establishment of commercial operations in foreign markets.

The GATS should be one of the key reference texts used by corporate planners seeking to exploit foreign opportunities, especially outside North America. The next round of the GATS negotiations in 2000 should be a key focus for action by business.

To whom does the GATS apply?

All Members of the WTO must abide by the GATS. With over 130 Members, the GATS covers over 90% of global trade in services. Most of the other major economies have applied to join the GATS, including Russia, Ukraine, China, Taiwan, Vietnam, and Saudi Arabia. Once these countries are admitted, virtually 100% of trade in services will be taking place between countries who have agreed to abide by the GATS rules.

What are the important obligations of the GATS?

The most important obligations of the GATS include the following:

Most-Favoured-Nation (MFN) Treatment. A WTO Member cannot discriminate among foreign service providers by offering more favourable treatment to service providers of any one country. Members are permitted to maintain existing measures which contravene the MFN obligation, but any exceptions must be clearly stated in the Member's MFN exemption list.

National Treatment. In the services sectors listed in a Member's schedule of commitments, the Member cannot take measures to discriminate between domestic and foreign service providers; in other words, foreign firms must be treated as favourably as domestic firms. Any measure which violates the national treatment obligation must be clearly inscribed in the Member's schedule of commitments.

Market Access. In the sectors listed in a Member's schedule of commitments, the Member cannot take measures which are defined in the GATS as restricting market access. Examples of measures which would restrict market access include: quotas, economic needs tests, requirements for certain types of legal entities, and maximum foreign shareholding limits. Any measure which violates the market access obligation must be clearly inscribed in the Member's schedule of commitments.

Domestic Regulation. Members' regulations must be administered in a reasonable, objective and impartial manner. Qualifications and licensing requirements and technical standards must be based on objective and transparent criteria, and not more burdensome than necessary to ensure the quality of the service.

Transparency. Members shall make public all measures which pertain to the GATS. The WTO must be notified of any relevant changes to government policies, regulations or administrative guidelines which significantly affect trade in services covered by the specific commitments under the Agreement. As well, Members must establish enquiry point and respond promptly to requests for information on their regulatory regimes.

In the event that a Member fails to carry out its obligations or specific commitments under the GATS, other Members have recourse to the WTO's dispute settlement mechanism.

How does the GATS relate to the day-to-day business of supplying a service?

The GATS covers all the major ways in which service suppliers serve their clients — the so-called modes of supply. This means that countries have to say whether or not they allow:

- foreign firms to deal with clients in their market from across the border (i.e. electronically);
- their citizens to travel abroad to visit the supplier in order to consume a service;
- foreign service suppliers to establish an operation in their market; or
- suppliers to enter the country in person to do business.

As a result, firms know where they stand in foreign markets and in their dealings with foreign clients. If they encounter barriers related to these modes of supply, they can verify whether the GATS Member concerned has made legal commitments in this area and ask for the assistance of their government in resolving the issue. All Members have recourse to a dispute settlement process in case another Member does not conform to its obligations.

The bottom line

The GATS is a broad and comprehensive agreement which gives both guidance and enforceable guarantees to service suppliers who are seeking to supply services to foreign clients. Whatever the service

sector, whatever the means of supplying the service and whatever the target markets within the WTO Member countries, the provisions of the GATS provide guidance. When in doubt about their rights in a foreign market, or when seeking to clarify the opportunities open to them, the GATS should be a first point of reference for all service suppliers.

The GATS is primarily helpful to service exporters, but it also benefits other Canadians. Because it promotes trade and competition in services, business and consumer users of services have access to a broader spectrum of service suppliers and more competitive prices. All citizens stand to benefit from the new job opportunities and growth which can result from increased trade in services.

As the Canadian government conducts its pre-negotiation consultations, the industry and other interested parties now have an opportunity to identify the foreign trade restrictions they would like to see alleviated. Armed with this information, the government will strive to achieve an agreement that reflects the interests of the Canadian industry and public.

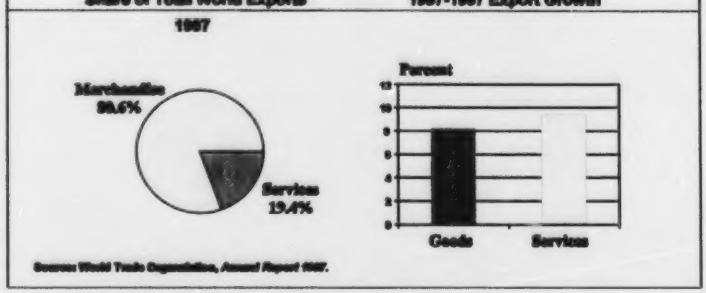
III. THE IMPORTANCE OF TRADE IN SERVICES

The international picture

Within the global economy, the significance of trade in services is hard to ignore. In 1997, world trade in commercial services, measured on a balance of payments basis, accounted for approximately one-fifth of total global exports (US$6.8 trillion). Consequently, trade in commercial services are currently valued at more that US$ 1.2 trillion worldwide.

However, commercial potential extends significantly beyond simple cross-border flows of services. It is estimated that trade in services through commercial presence could be at least as large as cross-border trade — that means that the balance of payments figures may only account for half the actual trade in services.* Several groups argue that services account for approximately 60% of the world's economic output, or more than US$14 trillion in economic activity which could be within the reach of international competition.

Figure 2
World Exports of Merchandise and Services



*** Cross-border trade in services** — where trade takes place from the territory of one Member into that of another. Only the service itself crosses the border, without the movement of persons, e.g. engineering plans sent by wire or satellite.

Commercial presence — any type of business or professional establishment, including branches and representative offices, e.g. direct investment in the host country. This data is currently unavailable.

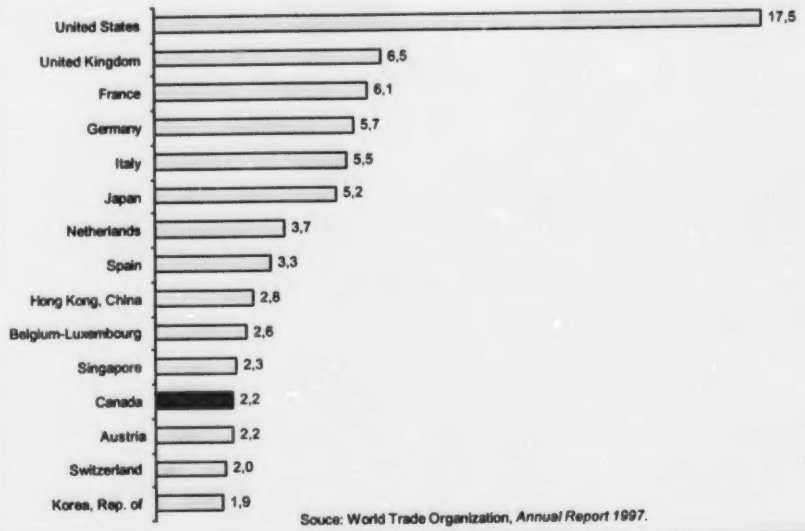
Canada's position

The service industries already play an important role in the Canadian economy and are growing faster than other components of Canadian Gross Domestic Product (GDP). Currently, these industries account for two thirds of Canada's GDP, almost three-quarters of employment, and nearly 90% of new job creation in Canada.

In 1997, the service industries generated 12.1% of total exports, and these exports accounted for 4.8% of Canada's GDP. At the same time, service imports represented 5.8% of Canada's GDP. Between 1987 and 1997, service exports grew on average by 9.1% per year, with commercial service exports growing at a more rapid pace of 11.2% per year. In addition, Canada's trade deficit in services fell from a peak of $13.4 billion in 1993 to $8.8 billion in 1997. As a result, Canada ranked 12th in the world for its exports of services in 1997 — representing 2.2% of the world's total service exports.

Figure 3: World Ranking

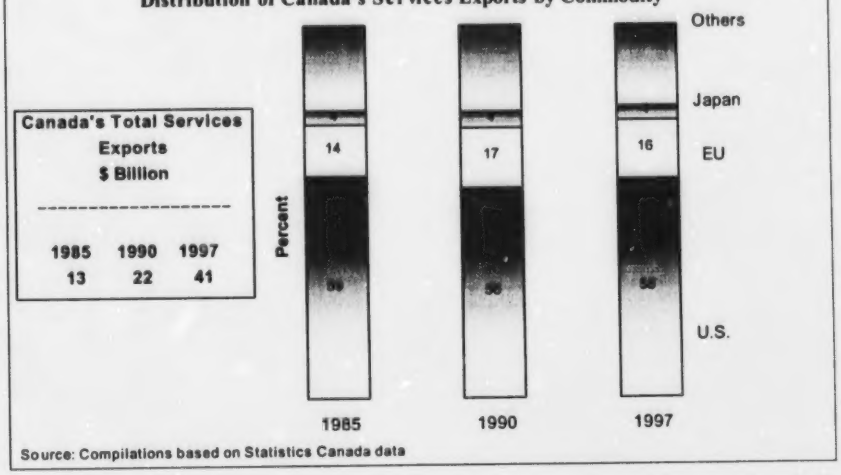
Percentage Share of Service Exports 1997



Souce: World Trade Organization, *Annual Report 1997*.

As with merchandise trade, the United States continues to be the main destination of Canada's service exports. However, the exports of services are more internationally diversified and the United States accounts for only 60% of total exports. One-fifth of Canada's service exports are bound for the European Union and Japan. The rest of service exports go mostly to other Asia Pacific and Latin America countries.

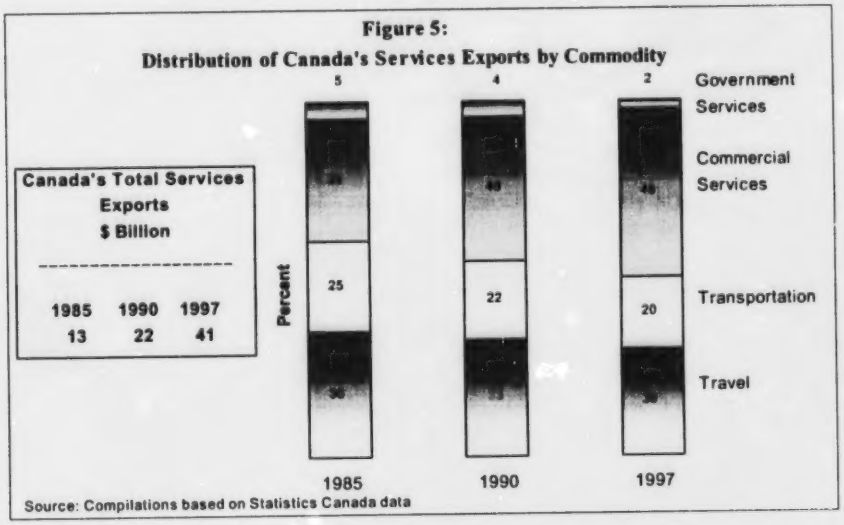
Figure 4:
Distribution of Canada's Services Exports by Commodity



Source: Compilations based on Statistics Canada data

Between 1985 and 1997, the share of commercial service exports in total service exports rose by 13 percentage points to 48%. Commercial services include: telecommunications; computer and information services; insurance and financial services; management consultant services; R&D services; and intellectual property services and royalties. During the same period, transportation and travel services grew at a slightly lower rate and now represent a smaller portion of Canada's service exports.

Figure 5:
Distribution of Canada's Services Exports by Commodity



Source: Compilations based on Statistics Canada data

While it is true that almost 50% of Canada's trade in services is made by the 100 largest firms in the service sectors, small and medium service firms are more likely to be engaged in exports than their goods producing counterparts.

... and this means?

In light of the increasing tradeability of services and the growing importance of the service industries to the economy, the prospects for more rapid growth in services trade are excellent. Canada clearly has the necessary expertise and capabilities to succeed in selling its services into rapidly growing international markets. In particular, Canadian lawyers should be able to capitalize on this growing trend of trade in services. The opportunities of the international market need to be explored.

IV. THE LEGAL SERVICES INDUSTRY

How are legal services defined?

Legal services refer to legal advisory and representation services in any legal or juridical procedures, and the drawing up of legal instruments or documentation. The work of drawing up legal instruments or documentation covers a group of related services in the form of fees for trademark and patent registration and maintenance fees on patents.

Lawyers provide legal advice, represent clients, prepare contracts and other legal documents, and may act as executor or trustees in estate matters. They often specialize in specific areas of law such as criminal, corporate, real estate and labour law.

The international market

Legal firms have taken on a more international orientation in recent years in order to keep pace with the growing global needs of their clientele. Most of the demand for foreign legal services comes from businesses and organizations involved in international transactions. Business law and international law are therefore the sectors most affected by international trade in legal services, although the possibility of entry of foreign service suppliers in more traditional sectors of domestic law should not be discounted as the sector becomes increasingly integrated and competitive.

Lawyers supplying legal services abroad usually act as foreign legal consultants (FLC). Foreign legal consultants may provide advice in international law, the law of their home country or in the law of any third country for which they possess the required qualifications. Domestic law still plays a marginal role in legal services trade due to barriers such as qualification requirements, which are shaped along national lines.

The legal services sector has experienced a steady and continuous growth in the past decades as a consequence of the growth in international trade and the emergence of new fields of practice, particularly in the area of business law. Issues such as corporate restructuring, privatization, cross-border mergers and acquisitions, intellectual property rights, new financial instruments, and competition law have recently generated an increasing demand for more sophisticated legal services.

Unfortunately, there is no comprehensive disaggregated data on the size of international legal services since these services are often bundled with other professional services or business services. It has been estimated that in the European Union, the number of professional suppliers of legal services grew on average by over 20% between 1989 and 1993. In the United States, the size of the legal profession is estimated to have tripled between 1973 and 1993.

The number of lawyers and law firms varies among countries according to the size of the economy, the level of economic development, and the structure of the legal profession. In the mid 1990s, the number of lawyers in the United States reached 800,000, compared to 500,000 in the European Union and 19,000

in Japan. Japan's relatively small legal profession is explained by the fact that most of the counselling work is performed by non-qualified law graduates working as in-house lawyers.

In 1992, the output of legal services in the United States was valued at $US 95 billion, while in the European Union it reached $US 52 billion. In the early 1990s, the output of legal services in a "representative" economy represented 14% of all professional services and 1.1% of economic activity.

In the vast majority of countries the legal profession is practised by individual professionals or small firms, while large firms are still a phenomenon limited to a small number of Anglo-Saxon/ common law countries. In 1988, the first 91 law firms by number of partners were from the United States, Canada, the United Kingdom, and Australia. The top twenty firms included 17 from the United States, two from Canada and one from the United Kingdom. In the past few years, however, more large firms have emerged in civil law jurisdictions such as France, Germany, and the Netherlands.

Most trade in legal services takes place across borders or via the temporary stay of natural persons travelling as individual professionals or as employees/partners of a foreign established law firm. Affiliate trade of legal services is still limited as suppliers often find the costs and the difficulties associated with establishing a commercial presence too high.

Cross-border trade in legal services consists of the transmission of legal documents or advice by mail or via telecommunication devices. Technological developments in the telecommunications sector are creating more efficient and accessible ways by which cross-border trade in legal services can take place. Trade in legal services is expected to benefit from the growth of the Internet and of electronic commerce since the majority of legal services (with some exceptions, such as court appearances) can be delivered electronically.

The Canadian snapshot

In 1997, approximately 67,000 persons were employed as lawyers, notaries or judges in Canada (including articling students). The Federation of Law Societies of Canada (an umbrella organization for all bodies that govern lawyers in Canada) claims that it had 67,994 members in 1997, of which 26,420 were from Ontario (Law Society of Upper Canada), 20,365 from Quebec (Barreau du Québec and La Chambre des notaires), and 8,329 from British Columbia.

The Canadian legal services industry is composed of a few large firms, a large number of mid-sized law offices, and numerous small and individual practices. As of December 31, 1997, the Federation of Law Societies of Canada estimated that there were over 13,000 sole practitioners, over 5,000 firms with 2-25 lawyers, and 60 firms with more than 50 lawyers.

With the exception of Quebec, all Canadian provinces have legal systems based on the common law tradition. Quebec inherited its civil law tradition from France and separates the notarial profession from the legal profession. Notarial activities include property transactions, successions, and affidavits on divorce. Although in some countries notarial services are regarded as services supplied in the exercise of

governmental authority, Canadian notaries supply their services on a commercial basis and therefore are subject to the provisions of the GATS.

Domestic practitioners offer a wide range of services in different areas of the law. Canada has significant expertise in all major areas of law such as business, securities, competition, insurance, telecommunications, transportation, and constitutional law. In addition, Canadian practitioners have expertise in public law and the administration of justice, including the establishment of court systems, registry systems, and financial and banking systems.

Canada's legal profession is uniquely positioned in terms of legal expertise. With its bi-judicial systems of common and civil law (in Quebec), Canadian lawyers are well equipped to meet the challenges of an increasingly international market for legal services. The profession's diversity of size, capacity and linguistic expertise are added strengths.

Expansion into the international market will not go unimpeded. Canadian lawyers will continue to face competitive challenges from existing global players, principally the internationally focussed legal practices operating from the United States, the United Kingdom, France, Germany and Spain.

An estimated 20 to 25 Canadian firms currently operate in the international market either out of Canada or through overseas offices. Statistics on Canada's trade in legal services, produced for the first time by Statistics Canada in 1996, indicate that exports of legal services totalled $263 million. Approximately 80% of this originated from legal fees and the remaining 20% from patent and trademark related fees. Almost two-thirds of the total activity was with the United States while the remaining one-third was distributed among other countries with the United Kingdom and Hong Kong showing the most foreign billings.

Imports of legal services were estimated at $208 million in 1996. Approximately 60% were for legal services and 40% for patent and trademark fees. Overall, about two-thirds of the total payments for legal services were made to the United States. Unfortunately, trade statistics include only the cross-border flows of legal services and do not include transactions undertaken by individuals crossing the borders or by foreign subsidiaries of Canadian establishments.

V. REGULATORY STRUCTURE AND RELEVANT TRADE LIBERALIZATIONS

Globally...

Legal services belong to the group of "accredited" professional services. Lawyers often require a licence to practice. Licensing requirements may include qualification, establishment or residency requirements, absence of a criminal record, the taking of an oath, subscription of a professional indemnity insurance, etc. Professional organizations of lawyers exist in most countries and membership in these organizations is often mandatory.

Typical market access limitations in the legal sector include: restrictions on the movement of professional, managerial and technical personnel, and restrictions on the form of incorporation. Although lawyers engaging in advisory services in international and home/third country law (foreign legal consultants) are less likely to be subject to nationality requirements, general nationality requirements for all legal services may still restrict foreign legal consultants. Limitations on the form of incorporation are still very common in the legal services sector. Several countries prohibit incorporation, while others allow only selected forms of incorporation, but these restrictions are applied equally to foreign and domestic practitioners. Restrictions on foreign equity specific to legal services are not very common although general investment restrictions still apply to legal services.

Important national treatment limitations include: nationality requirements; restrictions on partnership with local professionals; restrictions on the hiring of local professionals; restrictions on the use of international and foreign firm names; residency requirements; and general discrimination in the licensing process. Nationality requirements in this sector are often based on the notion that lawyers provide a "public function." Requirements to partner with or to hire locally licensed professionals prevent law firms acting as foreign legal consultants from expanding into the fields of court representation and host country law.

Qualification requirements often represent an insurmountable barrier to trade in legal services, especially for the practice of host country law. Legal education differs from country to country and in some cases (like Canada) within the same country. In some instances, these differences are so significant that regulators require foreign qualified lawyers to re-qualify in order to be able to practice.

In the fields of international law and home/third country law, qualification requirements constitute lower barriers to trade than in the field of host country law. Foreign legal consultants usually seek access in fields of law for which they are already qualified. Foreign legal consultants are currently in the forefront of liberalization in the legal services sector. However, even in the absence of serious qualification requirement barriers, foreign legal consultants still face important regulatory obstacles with respect to licensing requirements. Indeed, though foreign legal consultants encounter few barriers when providing services across borders, their domestic establishment is never the less regulated in most countries.

Three EU directives deal with qualification requirements for lawyers in the European Union. The first directive requires each EU Member to recognise lawyers from other Member states for the purpose of providing occasional services. The second directive provides for the recognition of qualifications based on an aptitude test or a waiting period of practice. The third directive allows a foreign lawyer from an EU Member state to practice host country law immediately, after simply proving registration as lawyer in another Member state. After three years of practice, he or she will also be entitled to gain admission to the local profession and to the host country professional titles.

The North American Free Trade Agreement (NAFTA) does not contain binding provisions for the mutual recognition of qualifications among its Members. However, it includes disciplines on transparency, objectivity and licensing for professional services. In addition there is a work programme for the

development of mutually acceptable professional standards and criteria for the licencing and certification of professional services.

On June 19, 1998, Canada, the United States and Mexico signed an agreement that will permit lawyers from any one of the three NAFTA countries to act as foreign legal consultants in either of the other two countries. Lawyers licenced to practise in their domestic country will be permitted to establish offices in the other countries, represent clients in international commercial transactions, and give advice about their home law. They will also be authorized to form partnerships with lawyers or law firms from the other NAFTA countries.

And in Canada...

Law societies were established in each province and territory by statute of their respective legislative assemblies. As a result, the provincial law societies govern lawyers operating in their jurisdiction. The main responsibilities of the law societies include admitting lawyers to practice, setting professional standards, specifying professional liability insurance requirements, and administering disciplinary measures. Membership in the law society of the province where a lawyer whishes to practise in mandatory.

With the exception of Nova Scotia and Quebec, the governing body of the legal profession is called a *Law Society*. In Nova Scotia it is called a *Barristers' Society* and in Quebec there are two governing bodies, the *Barreau du Québec* (which governs lawyers) and the *Chambre des notaires du Québec* (which governs notaries).

Generally speaking, applicants to law societies as a student-at-law (also referred to as "student member" or "articled student") must hold a degree from a recognized Canadian university, have completed an articling period, demonstrate that they are of good character, and successfully complete an examination process which allows acceptance to the "bar" of that legal society. The Law Society of Alberta, the Law Society of Saskatchewan, the Law Society of Upper Canada, and the Law Society of Prince Edward Island require that their members be either Canadian citizens or permanent residents. The Law Society of Newfoundland requires that its members be residents of Canada.

The evaluation of foreign credentials is undertaken by the *National Committee on Accreditation* (NCA), a standing committee of the Federation of Law Societies of Canada. It is made up of representatives of the Committee of Canadian Law Deans, members of the practising bar, and members involved with the administration of provincial law societies. The NCA evaluates the legal training and professional experience of persons with foreign or non-common law legal credentials (including Quebec) who wish to be admitted to a common law bar in Canada. After its review, the NCA issues recommendations describing the scope of any further legal education that the applicant needs to complete to equal the standard of those who have earned a Canadian law degree. With the exception of the Law Society of Alberta, the Barreau du Québec and the Chambre des notaires du Québec, law societies and law schools in Canada use the NCA's recommendations in setting their requirements for call to the bar.

The NCA applies a uniform standard on a national basis so that applicants with foreign law qualifications can apply to the Committee regardless of the common law province (except Alberta) in which they wish to practise. Thus, applicants do not need to satisfy diverse entrance standards to practise law in Canada. In addition, the NCA produces and distributes the *Evaluation Guidelines* document which provides information on how the NCA operates and evaluates legal credentials from different parts of the world. This document is available on the Internet at http://www.flsc.ca/English/cm-ncaguidelines.htm.

Because most law is provincially governed, a lawyer qualified to practise in one Canadian jurisdiction does not have an automatic right to practice law elsewhere in Canada. However, the law societies have developed policies to practice temporarily in, or transfer permanently to another law society. The *Interjurisdictional Practice Committee* (IPC) has developed a protocol which has been adopted by all law societies except those of the Northwest Territories and Yukon. This protocol has facilitated the implementation of a nation-wide regulatory regime and promoted the adoption of uniform standards and procedures.

In Canada, a foreign legal consultant is a person qualified to practice law in a country other than Canada, or in an international jurisdiction of that country, who gives legal advice on the laws of the country in which he or she is qualified. Foreign legal consultants are permitted to practice in Canada as long as they meet the following requirements:

- they are members in good standing of the legal profession in their home jurisdiction;
- they are of good character;
- they have acquired three years of experience working under the direct supervision of a qualified foreign legal consultant;
- they will not handle trust funds;
- they will submit to the jurisdiction of the Canadian governing body and will comply with that society's legislation, regulations, and *Professional Conduct Handbook*;
- they carry comparable liability insurance coverage; and
- they are bonded or carry other security to protect clients in the event that they mishandle or misappropriate client funds.

International law firms are allowed to establish an office in a Canadian provinces, provided that:

- at least one partner of the firm is a member of and qualified to practice law in that Canadian jurisdiction; and
- the international law firm operates only in foreign jurisdictions which offer substantially the same treatment to law firms from Canadian jurisdictions as it offers to international law firms.

VI. ANALYSIS OF THE GATS COMMITMENTS RELATED TO LEGAL SERVICES

During the Uruguay Round of trade negotiations, a working group on professional services was created to discuss the applicability to the professional services sector of the basic concepts developed for the services agreement. It was agreed that there seemed to be no need for a specific annex dealing with legal services. However, at the conclusion of the Uruguay Round it was felt that work remained to be done on the domestic regulation of professional service industries, including legal services. Domestic regulations, such as qualification standards, were deemed to constitute effective barriers to free trade in legal services. As a result, the Working Party on Professional Services (WPPS) was established to contribute to the development of additional rules related to the domestic regulation of professional services. The WPPS was asked to develop guidelines for the regulation of the accountancy sector on a priority basis. The outcome of this effort will constitute a basis for work on other professional sectors including legal services.

In the WTO classification, legal services are sub-divided into: (i) legal advisory and representation services concerning criminal law; (ii) legal advisory and representation services in judicial procedures concerning other fields of law; (iii) legal advisory and representation services in statutory procedures of quasi-judicial tribunals, boards, etc.; (iv) legal documentation and certification services; and (v) other legal and advisory information. However, the distinction between the various fields of law was not as relevant to Members scheduling commitments as the distinction between advice and representation in host country, home country, and international law. As a result, the GATS schedules distinguish between the following legal services: (a) host country law (advisory/representation); (b) home country law and/or third country law (advisory/representation); (c) international law (advisory/representation); (d) other legal documentation, certification, advisory, and information services.

The GATS covers all advisory and representation services in the various fields of law and in statutory procedures. This includes notarial services since they are supplied on a commercial basis. However, activities related to the administration of justice (judges, court clerks, public prosecutors, etc.) are effectively excluded from the scope of the GATS as in most countries it is considered a "service supplied in the exercise of governmental authority."

Although several countries made commitments in legal services, many have identified restrictions. The following section analyses commitments related to the legal sector made by WTO Members during the last round of negotiations. Annex B contains a summary of these commitments for Canada's key trading partners. For complete details about GATS commitments, please contact us directly or visit our website at http://services2000.ic.gc.ca.

The horizontal commitments to consider...

As mentioned earlier, all Members committed to the basic precepts of trade liberalization in services, including the Most-Favoured-Nation (MFN) Treatment. In addition, several members also agreed to some basic horizontal issues and restrictions. These consist of broad measures affecting investment, real estate transactions, government subsidies or taxation, and the temporary movement of natural persons. To

assess the full extend of trade liberalization, horizontal restrictions have to be examined in conjunction with sector-specific commitments.

...in light of the sector-specific commitments

The remaining commitments are identified in the sector-specific schedule of each Member country. In the service sectors listed in their schedule, unless otherwise specified, Members agree to the basic national treatment and market access obligations of the GATS.

As a result of the Uruguay Round and subsequent accessions, 56 WTO Member countries have made commitments in legal services (the EU has a consolidated schedule for its 15 Member states). In addition, Aruba and the Netherlands Antilles submitted schedules even though they are considered part of the Netherlands. In total, 58 countries made commitments in this sector. Countries with commitments in legal services are identified in Table 1 of Annex B. The countries that did not make commitments in legal services are not constrained by the GATS obligations related to national treatment or market access.

Of the 58 countries, 23 made commitments in advisory host country law, 53 in advisory international law, 52 in advisory home country law, 5 in third country law, and 6 in other legal services (including legal documentation and certification services and other advisory and information services). In addition, several countries made commitments in legal representation services; 21 countries made this type of commitment in host country law, 18 in international law, and 18 in home country law. Countries with commitments in all three major types of law include Japan and the United States. Most EU countries made commitments only in international and home country law. Canada scheduled commitments in advisory international, home country and third country law.

Brunei Darussalam, Bulgaria, the Dominican Republic, and Singapore have MFN exemptions for legal services. Of these exemptions, one applies to all countries on the basis of reciprocity, while two others are based on case-by-case approval. The fourth exemption extends full national treatment for commercial presence and the presence of natural persons only to companies and citizens of countries with which preferential arrangements exist. Singapore agreed to keep the possibility of removing this exemption under review. Costa Rica, Honduras, Panama, and Turkey have MFN exemptions for professional services. These exemptions maintain reciprocity as a condition for authorizations to exercise professional activities including legal services.

Commitments vary significantly between countries and regions. Several countries including Canada made commitments about foreign legal consultants, while far fewer made commitments about host country law. Several developing countries have made relatively liberal commitments in legal services, but the majority did not provide a schedule for legal services and, therefore, remain completely unbound. Commitments by country are listed in Table 1 of Annex B.

It appears that many countries apply regimes in this sector that are more liberal than the regimes committed to in their schedule. In addition, some countries which have not scheduled specific commitments in legal services maintain rather liberal regimes.

Limitations in general

Although 58 countries made commitments in legal services, there were limitations to these commitments. A map highlighting some of these limitations by region is presented in Annex B. The most common limitations to market access are restrictions on the type of legal entity. In most cases, Members have limited the choice of legal form to natural persons (sole proprietorships) or partnerships, excluding limited companies. Some countries have also scheduled nationality and citizenship limitations. In one country, consent of the bar association is required for establishment.

With regard to national treatment, the most prevalent restrictions are residency requirements. In three instances, Members have scheduled a requirement for all legal service suppliers (domestic and foreign) to be graduates of national universities; this restriction discriminates *de facto* between domestic and foreign service suppliers. Other scheduled national treatment limitations include: (i) recognition of foreign degrees only for nationals who have studies abroad; and (ii) the requirement for foreign lawyers to take an active part in the business in order to be able to maintain an interest in a local law firm.

Legal services, like other professional services, is a sector where regulatory barriers are rather high. Most measures are licensing and qualification requirements, which may constitute important barriers to trade in legal services. However, domestic regulatory requirements do not have to be listed in the schedule, unless they fall within the definition of market access or national treatment, but those measures affecting trade must still be administered in a reasonable, objective and impartial manner. A total of 26 Members list domestic regulatory measures in their schedule.

And in Canada specifically...

As mentioned previously, Canada has only scheduled commitments in advisory international, home country and third country law. Limitations include requirements that commercial presence take the form of a proprietorship or partnership. In addition, lawyers in Prince Edward Island, Alberta, Ontario and Newfoundland must be permanent residents for accreditation purposes.

For foreign legal consultants, the right to practice without meeting normal accreditation requirements is granted temporarily in the provinces of British Columbia, Saskatchewan and Ontario on the following basis:

- In British Columbia and Saskatchewan, the foreign legal consultant must be a "member in good standing" of the legal profession in her/her home country.
- In Saskatchewan, the foreign legal consultant must have practised the law of his/her country for at least three complete years, and in Ontario, for at least the five previous years.
- In British Columbia and Saskatchewan, the person must be of good character, repute and physically fit. In Ontario, the person must be of good character.
- In Saskatchewan, the foreign legal consultant must carry a fidelity bond or other security in an amount of at least one million $CAN.
- The foreign legal consultant in Saskatchewan undertakes not to accept, hold or transfer and or in any other manner deal with trust funds.
- In British Columbia and Saskatchewan, the foreign legal consultant must complete any mandatory continuing legal education programme.
- In British Columbia, the foreign legal consultant must become a member of the provincial law society and must have liability insurance.
- In Ontario, the foreign legal consultant must reside or undertake to reside in Ontario as soon as practicable.

Canada's scheduled commitments in legal services lead to relatively restricted access for lawyers from outside Canada. The lack of uniformity among provinces adds an extra burden to foreign lawyers practising in Canada, while the commercial presence stipulations impose restrictions on companies that wish to invest and do business in Canada. There is still room for simplification and liberalization of our commitments in legal services.

VII. PROPOSED CANADIAN OBJECTIVES FOR THE GATS 2000 NEGOTIATIONS

Canada's objective for the next round of GATS negotiations is to improve the quality and quantity of schedules offered by Members. Based on initial analysis, the following have been identified as proposed objectives for legal services (the list is partial and open to review):

- Securing better market access for the *commercial presence* mode of delivery by negotiating less restrictive investment measures and nationality requirements, and fewer stipulations regarding the type of corporate entities Canadian firms can establish abroad;

- Securing improved access for professionals and natural persons;

- Improving transparency requirements and ensuring consistency of domestic regulations to facilitate foreign entry;

- Achieving higher levels of liberalization in a variety of other professional service industries given that successful legal firms will require mastery of organisational skills and advanced technology. Countries that are strong in consultancy, technology and organisational know-how will have a comparative advantage in the legal services sector; and

- Increasing the number of countries making full commitments in legal services.

VIII. LET US KNOW WHAT YOU THINK

Those involved, or interested, in exporting Canadian legal services can assist the government in refining these general objectives by providing information on their particular international activities and experiences. The following questions are offered as guidelines for formulating comments.

- What type of services do you currently export or what type of internaitonal activities have you undertaken?

- What are the destinations of these service exports?

- Currently how important are your international exports and activities:
  - very important;
  - moderately important; or
  - not important at all?

- In order, what are the most important methods by which you reach your foreign clients:
  - establishing a legal entity in the foreign country (i.e. subsidiary or branch);
  - temporarily sending personnel to the client's foreign location;
  - by mail;

- over the phone;
- by fax;
- transmitting your services electronically over the Internet; or
- having the foreign client visit you in Canada?

- In the future, which countries do you anticipate will be important export destinations for your services?

- What type of services do you anticipate exporting in the future or what kind of international activities do you expect to undertake in the future?

- How important do you anticipate international trade will be in the future:
  - very important;
  - moderately important; or
  - not important at all?

- Do you anticipate that your method of delivering services internationally will change?

- In the future what do you anticipate will be the most important methods by which you reach your foreign clients:
  - establishing a legal entity in the foreign country (i.e. subsidiary or branch);
  - temporarily sending personnel to the client's foreign location;
  - delivering services by mail, over the phone, or by fax;
  - transmitting your services electronically over the Internet; or
  - having the foreign client visit you in Canada?

- If you have limited or curtailed your international activities, was it as a result of:
  - barriers to foreign market access;
  - lack of government procurement opportunities;
  - lack of commercial competitiveness; or
  - other barriers?

- In each of your foreign markets (current or future), how much do local regulations affect your firm's ability to provide services:
  - a lot;
  - moderately; or
  - not at all?

- What specific measures have impeded your firm's business, or have affected your customers' ability to do business with your firm? (If possible, please cite the law or policy that impedes the conduct of business.)

- For each impediment to doing business, how important is it for your firm that the measure be removed:
  - very important;
  - moderately important; or
  - not important at all?

- Do you think that partnering with foreign firms is an effective way to deliver services? Can you establish or form associations easily?

- What would you consider the priority concerns with respect to the liberalization of trade in legal services? (Rank the following from most to least important.)
  - "Buy-local" preferences
  - Investment limits or restrictions
  - Restrictions on the form of commercial establishments (i.e. partnership, joint venture, etc.)
  - Immigration/temporary entry restrictions
  - Limitations on the number of service providers in the market (i.e. quotas, exclusive rights, etc.)
  - Non-recognition of professional credentials
  - Lack of transparency of local practising/licensing regime
  - Restrictions on access to government procurement projects
  - Subsidies and tax incentives
  - Licensing requirements
  - Qualification requirements
  - Restriction on the use of company names
  - Language requirements
  - Residency/citizenship requirements
  - Restrictions on fee-setting
  - Unfair bidding practices
  - Currency controls
  - Others _____

- Negotiation of a multilateral agreement on services trade may well involve an exchange of concessions in which each country would agree to further liberalization of its domestic market. Are there any Canadian measures affecting your sector that are essential to your continued profitability and that should not be liberalized?

- Are there certain areas where internationally liberalized market access in Canada will have a significant impact on Canadian firms? What will be this impact and how large will it be?

- Do you consider that the barriers to trade in legal services warrant significant attention in the GATS negotiations? Why?

If you wish to make your views known to the government, please forward your input to the following address:

GATS 2000
International Investment and Services Directorate
Industry Canada
235 Queen Street
Ottawa, Ontario
K1A 0H5

Attention: Carla VanBeselaere
Telephone: (613) 957-8108
Fax: (613) 952-0540
E-mail: vanbeselaere.carla@ic.gc.ca

IX. ACKNOWLEDGEMENTS AND REFERENCES

Much of the information in this document was sourced from the following five documents:

The Regulation of the Legal Profession in Canada: A document prepared by the Federation of Law Societies of Canada.

1997 Law Societies Statistics: A research document prepared by the Federation of Law Societies of Canada.

Canada's International Legal Services, 1995-1996: A Research Paper prepared by Colleen Cardillo for Statistics Canada.

Canada in the Global Context: A statistical overview of the Canadian services economy prepared by the Service Industries and Capital Projects Branch of Industry Canada.

Legal Services: A background note prepared by the World Trade Organization Secretariat.

X. ADDITIONAL INFORMATION SOURCES

About the legal services sector or service industries in general

Additional information on the legal services sector or service industries in general can be found on the Strategis website under *Business Information by Sector*, *Service Industries and Capital Projects*:

http://strategis.ic.gc.ca

or please contact:

Morris Krymalowski
5 Place Ville-Marie
7th Floor, Suite 700
Montreal, Quebec
H3B 2G2
Tel: (514) 283-7828
Fax: (514) 283-8916
e-mail: krymalowski.morris@ic.gc.ca

About the GATS

The legal text of the GATS is part of the *Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations*, and can be purchased through any government bookstore. It is publicly available through the WTO website at:

http://www.wto.org/wto/legal/finalact.htm

The WTO website also provides additional background material on the structure of the GATS and on recent sectoral negotiations at:

http://www.wto.org/wto/services/services.htm.

The EU also provides a practical examination of the WTO GATS commitments on their website at:

http://gats-info.eu.int/

You can also contact:

Services Trade Policy Division (EBS)
Department of Foreign Affairs and International Trade
Lester B. Pearson Building
125 Sussex Drive
Ottawa, Ontario
K1A 0G2
Telephone: (613) 944-0487
Fax: (613) 944-0058

More information on the GATS 2000 agenda

Visit Industry Canada's Service Industry website on Trade in Services at:

http://services2000.ic.gc.ca

Other useful information link on the Internet

The United States International Trade Commission (USITC) is an independent, quasi-judicial federal agency that provides objective trade expertise to both the legislative and executive branches of government, determines the impact of imports on U.S. industries, and directs actions against certain unfair trade practices, such as patent, trademark, and copyright infringement. USITC analysts and economists investigate and publish reports on U.S. industries and the global trends that affect them.

Its website is http://www.usitc.gov/

ANNEX A

DEFINITIONS AND GLOSSARY OF GATS TERMINOLOGY

Agreement on Government Procurement (AGP) - A WTO plurilateral agreement to which not all Members are signatories. Its purpose is to open up as much of this business as possible to international competition. It is designed to make laws, regulations, procedures and practices regarding government procurement more transparent and to ensure they do not protect domestic products or suppliers, or discriminate against foreign products or suppliers.

Balance of Payments - The difference between the income and expenditures of a country on its external account, resulting from exports and imports of goods, services, and governmental transactions.

Bound Commitment - Commitment that cannot be made more restrictive in the future; only further liberalization is permitted (unless the agreed penalty is paid).

Commitment - A measure, usually regarding market access or national treatment, that affects international trade in services. Commitments are listed in national schedules and identify service industries and modes of supply that are affected.

Emergency Safeguards - Measures suspending commitments in certain emergency situations.

Exclusive Rights - When the ability to provide certain services is restricted to a specific firm or firms.

Foreign Legal Consultants (FLCs) - Professionals practising international, home and third country law.

Horizontal Commitment - Commitment that applies to international trade in multiple service industries. Typically, horizontal commitments constitute limitations on market access or national treatment.

Juridical person - Any legal entity duly constituted or otherwise organized under applicable law, whether for profit or otherwise and whether privately- or governmentally-owned; includes corporations, trusts, partnerships, joint ventures, sole proprietorships, and associations (branches and representative offices are not included).

Legal Services Definition (CPC 861) - This sector corresponds to the United Nations Central Product Classification (UN CPC) at the three-digit level. The definition includes:

- *Legal advisory and representation services concerning criminal law*: includes legal advisory and representation services during the litigation process and drafting services of legal documentation in relation to criminal law. Generally, this implies the defence of a client in front of a judicial body in criminal offence case when private legal practitioners are hired on a fee basis by the government. Includes both pleading the case in court and out-of-court legal work.
- *Legal advisory and representation services in judicial procedures concerning other fields of law*: includes legal advisory and representation services during the litigation process and drafting

services of legal documentation in relation to law other than criminal law. Representation services generally consist of either acting as a prosecutor on behalf of the client, or defending the client from prosecution. Included are both the pleading of the case in court, and out-of-court legal work.

- *Legal advisory and representation services in statutory procedures of quasi-judicial tribunals, boards etc.*: includes legal advisory and representation services during the litigation process and drafting services of legal documentation in relation to statutory procedures. Generally, this implies representation of the client in front of a statutory body (e.g. an administrative tribunal). Includes both the pleading of the case in front of authorized bodies other than judicial courts and the related legal work.

Measure - A law, regulation, rule, procedure, decision, or administrative action that affects trade in services. Measures may pertain to: (1) the purchase, payment, or use of a service; (2) a service supplier's access to, and use of, services which are required to be available to the general public; and (3) a service supplier's ability to establish a presence, including a commercial presence, in a host country.

Member Countries - Countries which are signatories of the World Trade Organization and thus, the GATS.

Modes of Service Delivery:

- *Cross-border trade in services (Mode 1)* - Trade takes place from the territory of one Member into that of another without movement of the service provider, e.g. legal plans sent by wire or satellite.
- *Consumption abroad (Mode 2)* - Services consumed or purchased by nationals of a Member in the territory of another Member where these services are supplied, e.g. tourism, where the consumer travels to another country to consume the service.
- *Commercial presence (Mode 3)* - Any type of business or professional establishment, including branches and representative offices, e.g. direct investment in the host country.
- *Temporary movement of a natural person (Mode 4)* - Temporary presence of natural persons in a market for the purpose of supplying services, e.g. a professional or employee of a service provider.

Most-favoured nation treatment - A service or service supplier from a WTO Member country must be treated as favourably as a service or service supplier from any other country.

National treatment - Foreign services and service providers must be treated no less favourably than their domestic counterparts.

Natural person - An individual who is a national of a country under the law of that country, or in the case of a country which does not have nationals (e.g. territories), an individual who has the right of permanent residence under the law of that country.

Organizational form - The structure of a company (i.e. incorporated, partnership, etc.).

Technically infeasible - Not possible because technology does not permit it.

Unbound - Describes a situation where a WTO Member wishes to remain able to introduce or maintain measures inconsistent with market access and national treatment obligations.

ANNEX B

SUMMARY OF GATS COMMITMENTS RELATED TO LEGAL SERVICES

This annex summarizes the commitments related to the consulting legal sector made by WTO Members. The first section examines horizontal commitments that apply to all sectors (including law) while the second section includes details about the legal services sector-specific commitments. Taken together, these commitments represent the starting point for GATS 2000 negotiations. For reasons of presentation, the examination of sector-specific commitments is grouped by region and limited to Canada's major trading partners. Complete information on all WTO Member commitments is available on request or on the government of Canada website at http://services2000.ic.gc.ca. A glossary of the terminology used in this section can be found in Annex A.

HORIZONTAL COMMITMENTS

These restrictions generally summarize broad measures affecting commercial presence and investment, real estate transactions, government subsidies or taxation, and temporary movement of natural persons. In addition to these restrictions, developing countries have also established preferences for companies that offer the best terms for technology transfer. The horizontal commitments supersede any sector-specific commitments. To assess the full extend of trade liberalization, horizontal commitments have to be examined in conjunction with sector-specific commitments.

1. Commercial Presence and Investment Restrictions

The acquisition and control of a domestic business by a foreigner may be subject to investment ceilings, restrictions as to the type of assets that may be held, local incorporation and presence requirements, and government approval. For example, Canada requires approval of all direct acquisitions of Canadian businesses with assets equal to or higher than a monetary amount established annually and published in February of each year in the *Canada Gazette*; in 1998, the threshold was C$179 million for WTO Members.

2. Real Estate Transactions Restrictions

Many countries restrict the purchase of real estate and the acquisition of land. Nationality restrictions and deposit requirements are relatively common. Often, these regulations are established by sub-federal levels of government and as a result tend to be extremely complicated. Rather than impose restrictions on domestic real estate regulations, the GATS rules require transparency and access to information about these rules.

3. Government Subsidies and Taxation

To clarify issues related to domestic taxation and access to subsidies, Members provided specific comments in their schedules. Foreigners may not be eligible for certain subsidies or may, under special

circumstances, have to pay a different tax rate. For example, the United States reserves the right to impose higher taxes on a national, resident or corporation of a foreign country where a national, resident or corporation of the United States is subject to discriminatory or extraterritorial taxes. All countries maintain sovereignty over domestic issues of taxation and subsidization.

4. Movement of Natural Persons

Generally, the GATS does not prevent a Member from applying measures to regulate the entry of natural persons into, or their temporary stay in, its territory. The movement of natural persons is unbound under most GATS schedules. However, many Members generally committed to allowing temporary entry for intra-corporate transferees (managers, executives and specialists), personnel engaged in the establishment of a business, and service salespersons. Permanent entry is not dealt with in the GATS and remains under the authority of local immigration authorities.

LEGAL SERVICES SECTOR-SPECIFIC COMMITMENTS

This section outlines the sector-specific commitments and limitations to market access and national treatment established in individual country schedules. In total, 58 countries provided schedules for legal services but the level of commitment varies significantly by region and country. For reasons of presentation, the examination of sector-specific commitments is grouped by region and limited to Canada's major trading partners.

United States
(The terms of access provided by the United States in the GATS are not as liberal as those provided in the North American Free Trade Agreement).

- *Legal Services: practise as or through a qualified U.S. lawyer (all states)*
  - For market access, services must be supplied by a natural person.
  - For market access, an in-state office must be maintained for licensure in: the District of Columbia, Indiana, Michigan, Minnesota, Mississippi, New Jersey, Ohio, South Dakota and Tennessee.
  - For market access of commercial enterprises, partnership in law firms is limited to persons licenced as lawyers. U.S. citizenship is also required to practice before the U.S. Patent and Trademark Office.
  - For national treatment, in-state or U.S. residency is required for licensure in: Hawaii, Iowa, Kansas, Massachusetts, Michigan, Minnesota, Mississippi, Nebraska, New Jersey, New Hampshire, Oklahoma, Rhode Island, South Dakota, Vermont, Virginia, and Wyoming.
- *Legal Services: consultancy on law of jurisdiction where service supplier is qualified as a lawyer, excludes: (i) appearing in any court or before any magistrate or other judicial officer; (ii) preparing any instrument effecting the transfer or registration of title to U.S. real estate; (iii) preparing will or trust instrument effecting the disposition of any property located in the United States and owned by a resident thereof; and (iv) preparing any instrument in respect of marital or parental relations, rights or duties of U.S. residents.*

- Access varies significantly by state and only the practice of international law is relatively liberal. In most states, the practice of international law is permitted provided that the Foreign Legal Consultant (FLC) is competent or to the extent allowed by the country where the lawyer is registered.
- Market access for commercial presence and natural persons is unbound in: Alabama, Arizona, Arkansas, Colorado, Delaware, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming.
- Alaska, California, Connecticut, Columbia, Florida, Georgia, Hawaii, Illinois, Michigan, Minnesota, New Jersey, New York, Ohio, Oregon, Texas, and Washington have relatively few limitations on access. In Michigan, in-state residency is required for national treatment of commercial presence or the presence natural persons. Minnesota, New Jersey, New York, Ohio and Washington require an in-state office for market access of natural persons.
- Practice of third country law is permitted only in New Jersey, Alaska, Connecticut, New York, Oregon, Ohio, District of Columbia, and Hawaii, but the lawyer must be competent in that country's law or obtains legal advice from an attorney licenced in that jurisdiction.
- Practice of host-country law is permitted only in New Jersey, New York, Alaska, District of Columbia, Hawaii, Oregon, and Ohio, but the FLC must obtain legal advice from an attorney licenced to practice in that jurisdiction.
- Ohio does not permit partnerships with local lawyers.

South America

(The terms of access provided by Chile in the GATS are not as liberal as those provided in the Canada-Chile Free Trade Agreement.)

- Members with GATS commitments in legal services: *Argentina, Chile, Colombia, Ecuador, Guyana, and Venezuela.*
- Argentina and Guyana made commitments in all forms of legal services; Chile made commitments concerning legal advice on matters of public international law and international commercial law; Columbia and Ecuador made commitments in legal advisory services in foreign legislation and international legislation (excluding advice and litigation in national law); Columbia also made commitments on legal advisory services related to mining; and Venezuela made commitments in legal advisory services (not representation services).
- With the exception of Chile, there are relatively few limitations on commitments made by these countries.
- Chile remain unbound with respect to cross-border supply and consumption abroad of legal services while the presence of natural persons is unbound except as indicated in the horizontal section. Foreign lawyers in Chile may be subject to assessment by the competent authorities. If the implementation of legal advice involves appearing or fulfilling formal procedures before a Chilean court of justice or administrative body, then it must be done by a professional recognized in Chile.
- Venezuela remains unbound with respect to the cross-border supply of legal services.

- Columbia remains unbound with respect to commercial presence and the presence of natural persons for the delivery of legal services not related to mining.
- In Guyana, non-CARICOM (the Carribean commonwealth) individuals are required to have their qualifications reviewed by the Council of Legal Education and undergo a six month period of training for national treatment.

Central America and the Caribbean

- Members with GATS commitments in legal services: *Panama, Netherlands Antilles, Jamaica, El Salvador, Dominican Republic, Trinidad and Tobago, Antigua and Barbuda, Cuba, Barbados, and Aruba.*
- Cuba made commitments in legal services and other legal advisory and information services; Barbados made commitments in legal documentation and certification services; Aruba, Antigua and Barbuda, Jamaica, Netherlands Antilles, and Panama made commitments in legal advisory international law and home-country law; Dominican Republic and El Salvador made commitments in other legal advisory and information services; and Trinidad and Tobago made commitments in advisory international legal services.
- Cuba remains unbound with respect to the cross-border supply of legal services.
- Barbados remains unbound with respect to cross-border supply and consumption abroad; for market access only a natural person can practice law and an attorney has to be admitted to the local Bar and registered as required under the *Legal Profession Act.*
- In order to practise as a lawyer in El Salvador, the authorization of the Supreme Court of Justice is required. A foreigner wishing to practise as a lawyer in El Salvador must be a graduate of a Salvadorian university. To practise as a notary it is necessary to be Salvadorian.
- Aruba remains unbound with respect to the presence of natural persons for market access.
- The Dominican Republic remains unbound with respect to the presence of natural persons and national treatment of cross-border supply and consumption abroad.
- In Jamaica attorneys from other jurisdictions cannot practice without acceptance by the Jamaica Bar Association.

European Union

- Members with GATS commitments in legal services: *Austria, Belgium, Denmark, Finland, France, Germany, Greece, Netherlands, Ireland, Italy, Luxembourg, Portugal, Spain, Sweden, and United Kingdom.*
- All EU countries made commitments related to legal advice on home country law and public international law. France and Luxemburg also made commitments in home country law.
- France and Portugal remain unbound for the drafting of legal documents.
- For national treatment, the marketing of legal advisory activities is restricted in Denmark to lawyers with a Danish licence to practice and law firms registered in Denmark. For national treatment, only lawyers holding a Danish licence to practise may sit on or be part of the management team of a Danish law firm.

- Market access of commercial enterprises in Germany is subject to acceptance into a Bar Association according to the *Federal Lawyers Act*, which requires establishment and is restricted to sole proprietorships or partnerships.
- For market access of natural persons, Germany and the United Kingdom require a university degree, professional qualifications, and three years of professional experience in the sector.
- Host country law and international law in France are open to members of the regulated legal and judicial professions.
- In Luxemburg, host country law and international law are subject to registration as "avocat" at the Luxembourg Bar.

Other European Countries (including eastern Europe)

- Members with GATS commitments in legal services: *Bulgaria, Czech Republic, Hungary, Iceland, Liechtenstein, Norway, Poland, Romania, Slovak Republic, Slovenia, and Switzerland.*
- The Czech Republic, Poland, Romania, the Slovak Republic, and Slovenia made commitments regarding legal services in general. Bulgaria, Liechtenstein, Iceland and Switzerland made commitments for advisory services in international and home country law, while Iceland also made commitments dealing with third-country law. Norway made commitments for legal advice on foreign (home country) law.
- For market access to Norway, it is necessary to take active part in the business and to have an interest (own shares and/or be a member of the board of the firm) in a firm of Norwegian advocates. Foreign advocates can give advice on foreign law and international law after application; however, there are some restrictions on co-operation with Norwegian advocates.
- Liechtenstein remains unbound with respect to commercial presence.
- In Iceland, members of the General Bar Association have an exclusive right to represent clients before all the major courts. For national treatment regarding legal advice on home country law, lawyers must pass an Icelandic law exam (or equivalent) and satisfy conditions of nationality or previous residency of at least one year when practising legal services as a member of the General Bar Association of Iceland.
- In Hungary, commercial presence should take the form of a representative office for market access.
- For activities involving national law in the Czech and Slovak Republics, acceptance in the local Bar Association or Chamber of Commercial Lawyers is required. For national treatment, barristers and commercial lawyers must be graduates of local universities.
- In Bulgaria, consultancy on law does not include (i) legal representation in front of jurisdiction (judicial or non-judicial) and administrative bodies as well as preparation of legal documents for such procedures; (ii) expression of legal options concerning laws other than the law of the jurisdiction where the service supplier is qualified as a lawyer; and (iii) out-of-court legal representation related to the rights and obligations of Bulgarian nationals.
- Swiss nationality is necessary to open up a practice in the canton of St. Gall.
- In Slovenia, commercial presence is restricted to sole proprietorships or partnerships. Only lawyers with a licence to practice may be partners. For activities involving national law, acceptance into the local Bar Association is required. Consent of the Bar Association is required

for the establishment of any law firm. To be accepted into the Bar Association, lawyers have to have a certificate of knowledge of Slovenian law and must be proficient in the Slovenian language.

- In Poland, the establishment of commercial presence requires authorization and the Polish nationality.
- Romania remains unbound with respect to commercial presence and the presence of natural persons.

Middle East

- Members with GATS commitments in legal services: *Turkey and Israel.*
- Turkey has made commitments in advisory services on foreign and international law and Israel has made commitments on legal services in general.
- For national treatment, representation in the Turkish courts is reserved to Turkish nationals.
- Commercial presence in Israel is restricted to Israeli residents or citizens.

Asia-Pacific

- Members with GATS commitments in legal services: *Thailand, Malaysia, and Japan.*
- Thailand and Japan made commitments regarding legal services in general, whereas Malaysia made commitments for advisory and consultancy services relating only to home country laws, international law and offshore corporation laws of Malaysia.
- Thailand is unbound with respect to the cross-border supply of legal services and the presence of natural persons. For national treatment, foreign equity participation cannot exceed 49%.
- In Malaysia, market access for commercial presence can only be through a corporation incorporated in the Federal Territory of Labuan. Legal services shall only be supplied to offshore corporations established in the Federal Territory of Labuan.
- In Japan, a service supplier must be recognized as "Gaikoku-Ho-Jimu-Bengoshi" by the Minister of Justice and must register with the Japan Federation of Bar Associations. To receive recognition, the service supplier must (i) be qualified as a lawyer in the jurisdiction; (ii) be engaged as a lawyer for at least 5 years in the jurisdiction; (iii) not be subject to such conditions of disqualification in the jurisdiction which if applied to Bengoshi would disqualify the Bengoshi; (iv) undertake the profession in good faith; (v) possess plans, residence and financial basis to perform the functions properly and steadily; and (vi) possess the capability to compensate for damages caused to the client. For market access, the services must be supplied by a natural person and commercial presence is required. For consultancy on law of a jurisdiction where the service supplier is a qualified lawyer, the service supplier is required to stay in Japan not less than 18 days in a year for national treatment.

Africa

- Members with GATS commitments in legal services: *South Africa, Sierra Leone, Rwanda, Lesotho, and Gambia.*
- Sierra Leone, Rwanda and Gambia made commitments regarding legal services in general. South Africa and Lesotho made commitments in domestic law and advisory services in foreign and international law.
- South Africa and Lesotho remain unbound with respect to cross-border supply and consumption abroad of legal services.
- In Sierra Leone, commercial presence must take the form of a partnership. Foreign ventures must be competitive and registered institutions in their own countries.

Australasia

- Members with GATS commitments in legal services: *Australia, New Zealand, Papua New Guinea, and Solomon Islands.*
- Papua New Guinea made commitments regarding legal services in general. New Zealand made commitments regarding domestic legal services and advisory international law. Australia and the Solomon Islands made commitments regarding home country law and public international law.

- In Australia, natural persons practising foreign law may join a local law firm only as an employee or as a consultant and may not enter into partnership with or employ local lawyers. For national treatment in New South Wales or Victoria, at least one equity partner in a firm engaged in advising on foreign law matters must be a permanent resident; in Queensland, at least one equity partner in a foreign law firm must be a resident for a minimum period of 180 days per calendar year.
- In the Solomon Islands, commercial presence must take the form of a sole proprietorship or partnership.

Figure 6:
THE LEGAL SERVICES SECTOR
GATS Commitments

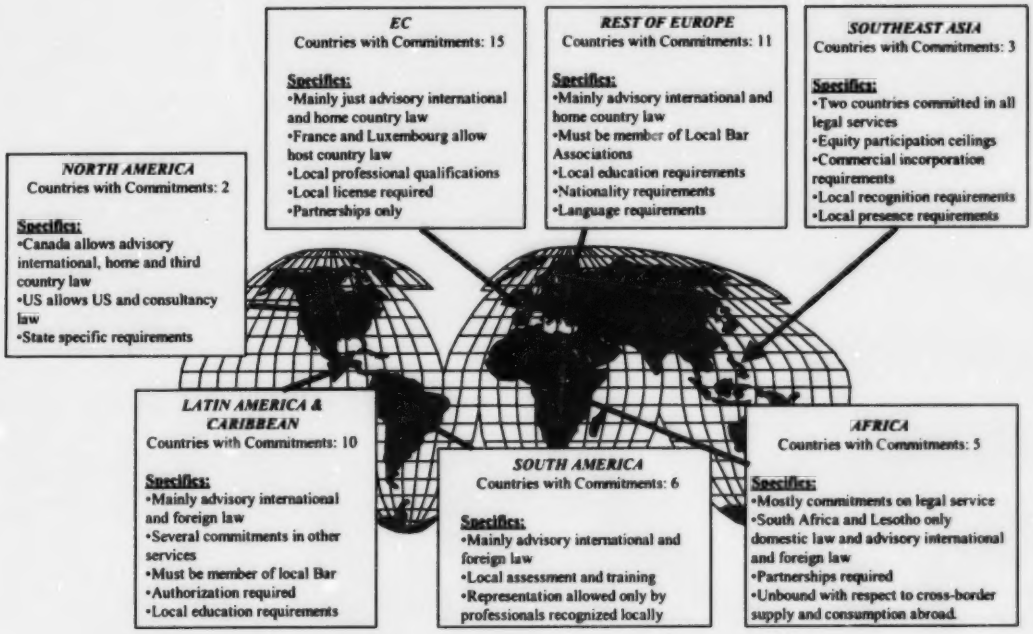


Table 1

COUNTRIES WITH GATS COMMITMENTS IN LEGAL SERVICES

COUNTRY	HOST COUNTRY LAW		INTERNATIONAL LAW		HOME COUNTRY LAW		OTHER	MODES
	Advisory	Representation	Advisory	Representation	Advisory	Representation		
Antigua and Barbuda			X		X			All*
Argentina	X	X	X	X	X	X		All*
Aruba			X		X			All, NT 4 unbound
Australia			X	X	X	X		All*
Barbados							Legal documentation and confirmation services	3, 4
Bulgaria			X		X			All*
Canada			X		XF			All*
Chile			X					3, 4
Colombia			X		XF		All* modes of supply for advisory services related to mining	12
Cuba	X	X	X	X	X	X	Other legal advisory and information services	2, 3, 4*
Czech Republic	X	X	X	X	X	X		All*
Dominican Republic							Other legal advisory and information services	MA: 1, 2, 3 NT: 3
Ecuador			X		X			All*
El Salvador							Other legal advisory and information services	All*

European Union	France and Luxembourg	France and Luxembourg	X		X			All*
Gambia	X	X	X	X	X	X		All*
Guyana	X	X	X	X	X	X		All*
Hungary					X			All*
Iceland			X		XF			All*
Israel	X	X	X	X	X	X		All*
Jamaica			X		X			All*
Japan	X	X	X	X	X	X	Services supplied by qualified patent attorneys and maritime procedure agents	All*
Lesotho	X	X	X		XF			3, 4*
Liechtenstein			X		X			1, 2, 4*
Malaysia	Domestic offshore corporate laws		X		X			1, 2, 4*; mode 3 limited to Labuan
Netherlands Antilles			X		X			All
New Zealand	X	X	X					All*
Norway					X			All*
Panama			X		X			All*
Papua New Guinea	X	X	X	X	X	X		All*
Poland	X	X	X	X	X	X		1, 2
Romania	X	X	X	X	X	X		1, 2
Rwanda	X	X	X	X	X	X		All
Sierra Leone	X	X	X	X	X	X		All*

Slovak Republic	X	X	X	X	X	X		All*
Slovenia	X	X	X	X	X	X		All*
Solomon Islands			X	X	X	X		All*
South Africa	X	X	X	X	X	X		3, 4*
Switzerland			X		X			All*
Thailand	X	X	X	X	X	X		2, 3
Trinidad and Tobago			X					All
Turkey			X		XF			All
United States	X	X	X	X	X	X		All*
Venezuela	X		X		X			2, 4*
Total number of countries	**23**	**21**	**53**	**18**	**55**	**18**	**6**	

Modes: (1) Cross-border supply, (2) Consumption abroad, (3) Commercial presence, (4) Presence of natural persons.
X: indicates a partial or full market access and national treatment commitment.
XF: indicates a partial or full commitment in home and third country law.
MA: market access.
NT: national treatment.
*: mode 4 unbound, except as indicated in the horizontal section .